

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 352 (2014)¹ Local and regional democracy in the Netherlands

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2.1.*b* of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers on the Congress of Local and Regional Authorities of the Council of Europe, which states that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2.3 of the aforementioned Statutory Resolution CM/Res(2011)2, which states that “the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. its Resolution 307 (2010) REV2 on procedures for monitoring the obligations and commitments entered into by the Council of Europe member States in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122);

d. its Resolution 299 (2010) on Follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009), which states that the Congress commits itself to using the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply made by the Committee of Ministers to Congress Recommendation 282 (2010) (CM/CONG(2011)Rec282final), encouraging the governments of member States to take account of the aforementioned Reference Framework within the context of their policies and reforms;

e. its Recommendation 55 (1999) on local and regional democracy in the Netherlands and its Recommendation 180 (2005) on the state of local finances in the Netherlands.

2. The Congress stresses the following:

a. the Kingdom of the Netherlands (hereafter “the Netherlands”) became a member of the Council of Europe on 5 May 1949. It is one of the Organisation’s founding States. It signed the European Charter of Local Self-Government (ETS No. 122) on 7 January 1988 and ratified it on 20 March 1991. The Charter entered into force in respect of the Netherlands on 1 July 1991. At the time

of ratification, the Netherlands made several “declarations” pertaining to different articles of the Charter, on the grounds of Article 12.2 of the Charter: namely, that the Netherlands will not consider itself bound by the provisions of Article 7.2; Article 8.2; Article 9.5; and Article 11 of the Charter. Moreover, and in accordance with Article 13 of the Charter, the Netherlands declared that it intended to confine the scope of the Charter to provinces and municipalities and that the Charter would apply to the Netherlands in Europe (on the grounds of Article 16 of the Charter);

b. the Netherlands signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207) on 16 November 2009 and ratified it on 13 December 2010 with entry into force on 1 June 2012.

3. It points out that:

a. Artur Torres Pereira, Rapporteur on local democracy, and Jean-Pierre Liouville, Rapporteur on regional democracy, were instructed by the Monitoring Committee to prepare a report on the Netherlands and to submit it to the Congress;²

b. the monitoring visit took place from 14 to 16 May 2013. During this visit, the Congress monitoring delegation met with representatives of State institutions (Parliament, Ministry of the Interior, Ministry of Finance), judicial institutions (Council of State, *Raad van State*), the Ombudsman (at national and local level), representatives of several local authorities (Amsterdam, Zoeterwoude, Gouda, local audit offices), of the Dutch Association of Municipalities (VNG) and of the Dutch Association of Provinces (IPO).

4. The Congress would like to thank the Permanent Representation of the Netherlands to the Council of Europe, VNG and IPO, as well as all interlocutors, for their very warm welcome and proactive assistance throughout the visit.

5. The Congress notes with satisfaction:

a. the generally positive nature of local democracy in the Netherlands as regards the implementation of the principles enshrined in the Charter, particularly those laid down in Articles 3, 5, 6, 7, 8 and 10;

b. the “Dualisation” reform from 2002-2003 through which the whole organisation of municipalities has been reformed, separating the composition, functions and powers of the local council and the executive board;

c. the modification of the Municipalities Act which regulates the involvement of the local council in the appointment procedure of the mayors;

d. the generally good relationship between central and local authorities;

e. the positive impact on the work of local and regional authorities, of the 2013 version of the Code on Inter-administrative Relations, concluded between the Government and IPO and VNG, especially on the process of consultation and regarding matters of co-operation, co-ordination, mutual assistance supervision and control;

f. the fact that the Dutch authorities are ready to consider the pertinence of ratifying some of the provisions not accepted at the time of ratification of the Charter;

g. the attention given to encouraging active participation of citizens of the Netherlands in the political decision-making process.

6. The Congress regrets:

a. that the principle of local self-government is not explicitly or directly recognised either in the applicable domestic legislation (Municipalities Act) or in the Constitution as required in Article 2 of the Charter;

b. the lack of clarity as regards specific competences for municipalities and provinces (Article 4.1 of the Charter);

c. that under the co-governance mechanism of *Medebewind*, local authorities' capacity to act and to take decisions is much more reduced when compared to their "autonomous" competences (Article 4.4 of the Charter);

d. the fact that the mechanisms of consultation with municipal and provincial authorities during the process of planning and decision making in all matters directly affecting them, such as laid down in the Code of Inter-administrative Relations, are not yet fully complied with (Article 4.6 of the Charter);

e. the inadequacy of financial resources freely available to local authorities, their dependence on State transfers and their limited own income in the framework of their competences (Article 9.1 and Article 9.2 of the Charter);

f. that the local taxation reform has limited the income of municipalities and provinces (Article 9.3 of the Charter).

7. The Congress recommends that the Committee of Ministers invite the Dutch authorities to:

a. clearly define the principle of local and regional self-government in domestic law or in the Constitution, in the light of Article 2 of the Charter;

b. clarify the areas of competence of municipal and provincial authorities, including those set out in the different sectors of government activity, in line with the spirit of Article 4.1 of the Charter;

c. reinforce the "autonomous" and "proper" competences of municipalities and provinces and reduce the tasks performed under the "*Medebewind*" procedure, in the light of the Article 4.4 of the Charter;

d. strengthen the mechanism of consultation between the State and the municipal and provincial level during the process of planning and decision making in all matters affecting the local authorities directly (Article 4.6 of the Charter);

e. amend the law on municipal and provincial finances in order to grant local authorities more autonomy from State transfers and allocate appropriate and concomitant financial resources for all competences exercised by municipal and provincial authorities, as required by Article 9.1 and Article 9.2 of the Charter;

f. improve local taxation so that local authorities can raise their own funds, in line with the requirements of Article 9.3 of the Charter;

g. reconsider the ratification of some non-accepted provisions of the Charter through a legislative amendment to the domestic law, notably its Article 7.2 which is apparently applied *de facto*.

8. The Congress invites the Committee of Ministers of the Council of Europe to take into consideration the present recommendation on local and regional democracy in the Netherlands, as well as the explanatory memorandum, in its respective activities related to this member State.

1. Debated and adopted by the Congress on 26 March 2014, 2nd Sitting (see Document [CG\(26\)7FINAL](#) explanatory memorandum), rapporteurs: Artur Torres Pereira, Portugal (L, EPP/CCE) and Jean-Pierre Liouville, France (R, SOC).

2. They were assisted in their work by Angel Manuel Moreno Molina, consultant with the Group of Independent Experts on the European Charter of Local Self-Government and Stéphanie Poirel, Secretary to the Monitoring Committee of the Congress.